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4 ERIC ARDOIN,
5 Plaintiff,
6 v.
7 MIKE MCDONALD,
8 Defendant.

9 Case No. [11-cv-05564-EMC](#)
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**12 ORDER REOPENING ACTION; AND
13 GRANTING PETITION FOR WRIT OF
14 HABEAS CORPUS**

15 Petitioner, a state prisoner, filed this habeas corpus action under 28 U.S.C. § 2254 in this
16 Court to challenge the murder conviction he received in 2007 in the San Francisco County
17 Superior Court, for which he received a sentence of 85 years to life in state prison. He raised
18 several claims in his habeas petition. In one claim, he alleged that the trial court violated his Sixth
19 Amendment right to counsel when it refused to reopen closing arguments after supplemental
20 instructions had been given to the jury after deliberations had started. This Court denied this and
all other claims in the petition and entered judgment in favor of Respondent on February 13, 2013.
(Docket Nos. 21 and 22.)

21 Petitioner appealed. The Ninth Circuit, on May 4, 2016, reversed this Court's judgment
22 regarding Petitioner's Sixth Amendment claim,¹ and remanded the action to this Court with
23 instructions to issue the writ ordering the state to retry Petitioner within a reasonable time or to
24 release him. (Docket No. 32.) On June 27, 2016, the appellate court denied petitions for rehearing
25 and for rehearing en banc, withdrew the previous memorandum disposition and replaced it with
26 another. (Docket Nos. 33 and 34.) The new disposition directed this Court to issue the writ
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28 ¹ The Ninth Circuit declined to address the other claims in the petition.

1 ordering the state to retry Petitioner within a reasonable time or to release him. (Docket No. 34.)

2 The Ninth Circuit issued its mandate on July 20, 2016. (Docket No. 35.)

3 Therefore, the case is **REOPENED** and the petition for writ of habeas corpus is
4 **GRANTED**. Respondent shall release Petitioner unless the state commences proceedings to retry
5 him within ninety (90) days of this order. This Court shall retain jurisdiction over this action until
6 the opinions of this Court and the Ninth Circuit are implemented.

7 The Clerk shall send a copy of this order and the Ninth Circuit's orders (Docket Nos. 32,
8 33, 34 and 35) to Petitioner by U.S. Mail, and to Petitioner's attorney and Respondent's attorney
9 by electronic filing (ECF/E-filing). Respondent shall file a report on the status of this action when
10 it commences criminal proceedings against Petitioner, or within sixty (60) days from the date of
11 this order, whichever occurs earlier.

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13 **IT IS SO ORDERED.**

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15 Dated: August 4, 2016



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17 EDWARD M. CHEN
18 United States District Judge